HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION
Dated 20th September, 2006
IIIrd Bail Application No. 505 of 2006

Order on the bail application of the accused.

CRIMINAL SIDE

Mahendra
S/o Late Sri Paltoo
R/o House No. 879,
Type-II, Sector-3, B.H.E.L.
Police Station – Ranipur,
District – Haridwar …… Applicant

Versus

State of Uttaranchal …… Opposite Party

In Case Crime No. 99 of 2005
U/s 498-A, 304-B & ¾ Dowry Prohibition Act
Police Station – Ranipur
District – Haridwar

Hon'ble J. C. S. Rawat, J.

Heard K.S. Verma, learned counsel for the applicant, learned AGA for the State and perused the record.

This is the IIIrd Bail Application moved on behalf of the applicant/accused. The 1st and IInd bail applications were dismissed by this court on merit. The IIIrd bail application has been moved on the ground that the chargesheet has been filed after 60 days and as such, the applicant/accused has got the right to be enlarged on bail u/s 167(2) of Cr.P.C. It is admitted to the parties that the accused had not filed any bail application immediately after 60 days or before filing the chargesheet before the learned Magistrate to get the accused/applicant released from the jail. It is also a disputed question at present the whether in the present case, the period of filing the chargesheet would be 90 days or 60 days. I would not like to go into detail in this aspect because the applicant/accused has not filed any bail application during the period of 60 days as claimed by the accused/applicant. It has been held in **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC p/453** that if the accused had filed the bail application immediately after the expiry of the stipulated period u/s 167 (2) Cr.P.C. and before the chargesheet has been filed for

seeking the bail and the learned Magistrate even had rejected the said bail application, the higher courts can consider the said bail application and can enlarge the accused/applicant on bail. If the accused has not availed this right, the accused cannot claim the benefit of Section 167(2) of the Cr.P.C.

In view of the above dictum of the apex court, it is clearly established that the petitioner has not availed the right of bail as has been claimed before this court. The prayer, as such, is misconceived. There is no other fresh ground for the bail, as such, I do not find any merit in this bail application.

Considering the facts and circumstance of the case in totality, it is a not a fit case for bail at this stage. The record summoned from the trial court be returned forthwith.

Accordingly, the bail application is rejected.

However, it is made clear that the trial court shall expedite the trial as early as possible, preferably within a period of five months.

(J.C.S. Rawat, J.)

Dated 20.09.2006
Shiv